In the High Court of Judicature at Madras

Dated : 23 .02.2006

Coram:

The Honourable Mr.Justice K.MOHAN RAM

Writ Petition No.811 of 1999

P.Shankerlal .. Petitioner

vs.

1.Managing Director,
State Transport Corporation,
Madurai Division III,
Karaikudi formerly
Marudhu Pandiyan Transport
Corporation Ltd., Marudhupathy,
Karaikudi.

2.Labour Court,
Madurai. .. Respondents

Petition filed under Article 226 of the Constitution of India, praying for a writ of certiorarified Mandamus to call for the records of the second respondent in I.D.No.164 of 1994 on the file of the Labour Court, Madurai dated 30.12.1997 and quash the same and direct the first respondent to restore the petitioner into service with back wages and all other consequential benefits.

For Petitioner : Mr.R.Ramesh

For Respondents : Mr.H.Balaji for R1.

ORDER

The above writ petition is directed against the award of the Labour Court, Madurai dated 30.12.1997 passed in I.D.No.164 of 1994.

2. The relevant facts are as follows:-

The first respondent is a Transport Corporation. The petitioner was working as a conductor in Aranthangi Branch under the first respondent Corporation. On 04.10.1993, he took the bus bearing Registration No.TN63 NO258 at

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3.40.p.m. During the trip between Rameswaram and Anranthangi, at 4.30 p.m., at Nariappalam, the Officers of the Corporation got into the bus and made a surprise verification and found that he had received a sum of Rs.42/- from six passengers at the rate of Rs.7/- each, for the distance between Rameswaram and Ramnad and issued tickets and entry has been made in the counterfoil at the rate of Rs.1/-, but in the original ticket at the rate of Rs.7/- and thereby attempted to misappropriate the sum to the tune of Rs.36/- and manipulated the records. Statements were obtained from the passengers. The tickets and counterfoils were seized. But the petitioner refused to affix his signature either the statement of the passengers or the tickets of counterfoils. The petitioner was placed under suspension, pending enquiry by an order dated 05.10.1993. Thereafter, a detailed charge memo dated 13.10.1993 was issued to him along with the copy of the basic report and he was directed to submit his explanation. Since he failed to submit his explanation, it was decided to conduct a domestic enquiry against him. In the enquiry, the petitioner was provided with adequate opportunities in accordance with the principles of natural justice and the petitioner also availed the opportunities. Thereafter, the enquiry officer in his findings dated 04.12.1993 has held that the charges levelled against the petitioner were proved in the enquiry. The first respondent provisionally decided to agree with the findings of the Enquiry Officer and also provisionally decided to dismiss him from service and accordingly, a second show cause notice dated 13.12.1993 was issued to him. On that, the petitioner submitted his explanation dated 04.02.1994. After considering the entire records and reply submitted by the petitioner, the first respondent came to the conclusion that charges levelled against the petitioner were proved in the enquiry and accordingly, he held that the following misconducts of the petitioner have been proved viz.,

> "1. On 04.10.93 in the bus TN 63 N 0258 has taken trip as conductor and collected fares from 6 passengers at the rate of Rs.7/- bound for Ramnad from Rameswaram and issued tickets to the effect of Rs.1 and entry was made in the counterfoils as if tickets are issued at the rate of Rs.7/-
>
> 2) By his above activities, he attempted to misappropriate to the tune of Rs.36/-

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3) He failed to make proper entries in the respective documents and manipulated false documents.

4) He failed to sign in the statements of passengers and in tickets.

5) By his above activities he committed misconducts under order 16(c) of the Model Standing Orders".

3. After recording the above said findings and after considering the past records of the petitioner, the first respondent passed an order dated 21.02.1994, dismissing the petitioner from service.

4. The petitioner raised an industrial dispute questioning his dismissal from service and the dispute was taken on file as I.D.No.164 of 1994 by the second respondent / Labour Court. The Labour Court dismissed the dispute and confirmed the order of dismissal. Being aggrieved by that, the petitioner has filed the above writ petition to quash the charges levelled against him.

5. Heard Mr.R.Ramesh, learned counsel for the petitioner and Mr.H.Balaji, learned counsel for the first respondent.

6. Though several grounds have been raised in the affidavit and the same have been rebutted in the counter affidavit, the learned counsel on either side advanced the following arguments only.

7. The learned counsel for the petitioner submitted that no independent witnesses like passengers who travelled in the bus have been examined to substantiate the Management's case and the available materials on record do not warrant the findings arrived at by the Enquiry Officer and therefore the Labour Court's findings are vitiated.

8. The learned counsel further contended that the passengers from whom statements were recorded by the Checking Inspector have not been examined in the enquiry but, their statements have been relied upon by the Enquiry Officer. According to the learned counsel, Labour Court ought to have seen that the punishment is totally disproportionate to the alleged offences and therefore the Labour Court ought to have reduced the punishment. Except the above said submissions, the learned counsel for the petitioner did not advance any argument or submission.

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9. Per contra, the learned counsel appearing for the respondents submitted that it is not necessary to examine the passengers who travelled in the bus because the statements recorded from the passengers were not relied upon by the Enquiry Officer. As such, the findings recorded by the Enquiry Officer on the basis of the available materials on record and the evidence of the Checking Inspector and the acceptance of the same by the first respondent could not be faulted . He further contended that it is not a case of no evidence but, it is a case where there is ample evidence to support the findings recorded by the Enquiry Officer, the Labour Court has elaborately considered the evidence on record and the findings of the Enquiry Officer and the Labour Court has rightly rejected the claim of the petitioner. The learned counsel further submitted that since the charge levelled against the petitioner is serious and the misconduct committed by the petitioner is one of misappropriation, the order of dismissal cannot be said to be disproportionate and this Court should not interfere with the punishment awarded to the petitioner.

10. Since, the learned counsel for the petitioner submitted that the Enquiry Officer had relied upon the statements recorded from the passengers without examining them as witnesses and without affording an opportunity to the petitioner to cross-examine them and it has vitiated the entire proceedings, I gave an anxious consideration to the above said submissions by referring to the original records, since, neither the petitioner nor the respondents have filed a typedset containing the enquiry report or the order of the first respondent. A perusal of the enquiry report shows that the Enquiry Officer did not rely upon the statements recorded from the passengers but the findings are based on the evidence of the Checking Inspector Mr.Ramachandran and the tickets and counterfoils seized by him. Therefore, the contention of the learned counsel for the petitioner that the findings of the Enquiry Officer and based on the statement of the passengers is untenable. The learned counsel for the petitioner relied upon a judgement of the Apex Court reported in (1999) 2 SCC 10 (Kuldeep Singh Versus Commissioner of Police). In that judgement the Apex Court has held as follows:-

> "Where a statement previously made by a witness, either during the course of preliminary enquiry or investigation, is proposed to be brought on record in the departmental proceedings, the law as laid down by this Court is that a copy of that

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statement should first be supplied to the delinquent who should thereafter be given an opportunity to cross-examine that witness".

There cannot be any dispute about the aforesaid settled law. But it is not applicable to the facts of this case as point out above.

11. The learned counsel relying upon the decision of the Apex Court in (1999) 8 Supreme Court Cases 582 (Hardwarilal Versus State of Uttar Pradesh) submitted that the passengers from whom statements were recorded ought to have been examined in the enquiry. But the facts of the case on hand is totally different from the facts of the case referred to above. In that case non examination of the complainant was dealt with. Wherein, the appellant a Police Constable was charged as being under the influence of liquor and he hurled abuses in the police station at one constable. A departmental enquiry was initiated against the appellant. But neither the complainant nor the other employee who accompanied the appellant to the hospital for medical examination, was examined as witnesses. In that context the Supreme Court held that the enquiry was vitiated, being in violation of the principles of natural justice. Here relying on that judgment the learned counsel for the petitioner advanced an argument that the passengers in the bus should have been examined and their non examination would amount to violation of principles of natural justice. The passengers cannot be treated as complainants and the non examination will not in any way prejudice the petitioner and it will not amount to violation of principles of natural justice. Therefore, the said judgment of the Apex Court is not applicable to the facts of this case.

12. Learned counsel for the petitioner relying upon the judgment reported in (2000) 3 SCC 450 (U.P. State Road Transport Corporation Versus Mahesh Kumar Mishra) submitted that the punishment inflicted on the petitioner is severe and the Court should modify the judgment. In that judgment it has been held as follows:-

"This is not the case here as the respondent had issued tickets to all the passengers, who were found travelling in the bus, but the dispute was only with regard to the spot or place at which they had boarded the bus. To put it differently, the dispute was whether they had boarded the bus at "Zero Road" or at the "High Court". In these circumstances, the High Court was justified in

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interfering with the quantum of punishment".

The above passage extracted from the said judgement clearly shows that it is not a case of misappropriation. Hence, the said judgment is not applicable to the facts of this case.

13. The learned counsel for the first respondent relied upon the judgment of the Apex Court reported in (1977) AISLJ 408 State of Haryana and Others Versus Ratan Singh (S.C). Wherein the Supreme Court has held as follows:-

> "It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. However, the courts below misdirected themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The residuam rule to which counsel for the respondent referred, based upon certain passages from American Jurisprudence does not go to that extent nor does the passage from Halbsbury insist on sub rigid requirement. The simple point is, was there some evidence or was there no evidence - not in the sense of the technical rules governing regular court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by

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a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, Inspector of the flying squad, is some evidence which has relevance to the charge levelled against the respondent. Therefore we are unable to hold that the order is invalid on that ground".

14. In (2005) 2 Supreme Court Cases 481 (Bharat Heavy Electricals Ltd., Versus M.Chandrasekhar Reddy) after referring to several earlier judgments, the Apex Court in paragraph 26 has held as follows:-

"The fact that the misconduct now alleged is the first misconduct again is no ground to condone the misconduct. On the facts of this case as recorded by the Labour Court the loss of confidence is imminent and no finding has been given by the Courts below, including the Labour Court, that either the fact of loss of confidence or the quantum of punishment is so harsh to be vindictive or shockingly disproportionate. Without such finding based on records, interference with the award of punishment in a domestic inquiry is impermissible".

15. The learned counsel for the first respondent, for the preposition that unless the punishment imposed is shockingly disproportionate it will not be open to this Court to interfere with the judgment, relied upon the judgment reported in (2005) 7 SCC 338 (V.Ramana Versus A.P.SRTC) wherein the Supreme Court has held as follows:-

(11) "The common thread running through in all these decisions is that the Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case the Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision for that of the administrator. The scope of judicial review is limited to the deficiency in decision making process and not the decision.

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(12) "To put it differently unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the Court/Tribunal, there is no scope for interference. Further to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed".

16. For the same preposition the learned counsel relied upon a judgment reported in (2006) 1 SCC 118, (U.P.SRTC Versus Mahendra Nath Tiwari) in which at paragraph 8, the Supreme Court has laid down as follows:-

"It is a misconception to consider that the amount involved in an offence of this nature has material bearing, while considering whether there has been misconduct on the part of an employee. It may be relevant in a criminal prosecution when considering the quantum of punishment to be imposed. When a person like the conductor of a bus, who has the obligation to make proper collection of the charges from the passengers on issuing tickets to them, is found to have passengers in the bus, even if it be only one, to whom he had not issued a ticket, it clearly amounts to a clear violation of the duty imposed on him. It is really a breach of the duty cast on the conductor who is acting on behalf of the employer. Whether it be one passenger or ten passengers it would make no difference in principle in the absence of any explanation in that behalf. It was simply the case of a conductor who had violated the regulations or the terms of his employment and had betrayed his employer, which, in any event, is a grave misconduct justifying a dismissal".

17. On a reading of the above said decisions relied upon by the learned counsel for the respondent, the following principles are deducible :

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The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fair play is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic Tribunal, cannot be held good. The simple point to be considered in such matters is, was there some evidence or was there no evidence, not in the sense of the technical rules governing regular Court proceedings, but in a fair commonsense-way as men of understanding and worldly wisdom will accept. To put it otherwise, sufficiency of evidence in proof of the finding by a domestic Tribunal is beyond scrutiny. There should be an error apparent on the face of the record, like absence of any evidence in support of a finding and in such a case certainly the Court can interfere. If the case on hand is considered in the light of the above said principles of law, it is not a case of no evidence. The checking inspector Mr.Ramachandran was cross examined by the petitioner. Further the seized tickets and counterfoils have been marked. As pointed out by the Labour Court, the petitioner had not submitted any explanation for the show cause notice issued to him and nothing has been elicited in the cross-examination of the Checking Inspector to disbelieve his evidence in the domestic enquiry. The petitioner has simply stated that he issued tickets to the passengers for the cash received and he does not know any other thing. The Labour Court has also found that sufficient opportunity has been provided to the petitioner in the domestic enquiry and the principles of natural justice have been followed and hence has found that the findings of the Enquiry Officer could not be interfered with. On the basis of the evidence recorded by the Enquiry Officer the Labour Court has also found that there is sufficient evidence in proof of the finding handed over by the Enquiry Officer. Therefore, it is not open to this Court to interfere with the factual findings arrived at as stated above. It is not a case of no evidence, but there is enough evidence in support of the findings arrived at in the domestic enquiry and by the Labour court.

18. From the judgments cited by the learned counsel for the respondent it could be seen that once an act of misappropriation is proved, whether it may be for a small or large amount, there is no question of showing any sympathy and reinstating the employee in service. When an employer loses his confidence particularly in respect of a person who is discharging an office of trust and confidence, there can be no justification for this Court in directing his reinstatement. Once the misconduct is

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proved, the Court has to sustain the order of punishment though it is harsh. Even if the misconduct is the first time, there is no ground to condone the misconduct in the scope of judicial review. The Court would not go into the correctness of the choice made by the Management and the Court should not substitute its decision for that of the Management, since scope of judicial review is limited in decision making process.

19. The petitioner was a conductor of the bus who had the obligation to make collection of the charges from the passengers by issuing proper tickets to them. He is found to have issued proper tickets to the passengers in the bus but he had prepared counter foils containing a lesser amount. The Petitioner had violated the terms and regulations of employment and has betrayed his employer, which is a grave misconduct and therefore, I am of the view that the punishment of dismissal is justified.

20. For the above said reasons the writ petition fails and it is dismissed. No costs.

jbm

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. Managing Director,
   State Transport Corporation,
   Madurai Division III,
   Karaikudi formerly
   Marudhu Pandiyan Transport
   Corporation Ltd., Marudhupathy,
   Karaikudi.

2. The Presiding Officer,Labour Court,
   Madurai.

+ one cc to Mr. Srinath Sridevan, ADvocate sr no. 8322
+ one cc to Mr. S. Jayaraman, Advocate sr no. 8331

VC(CO)
NM(01.03.2006)

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